LIBRARY
SUPREME COURT, U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1959

No. 349

JOHN CLAY, PETITIONER,

vs.

SUN INSURANCE OFFICE LIMITED

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 26, 1959
CERTIORARI GRANTED OCTOBER 26, 1959

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 349

JOHN CLAY, PETITIONER,

vs.

SUN INSURANCE OFFICE LIMITED

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

INDEX

	Original	Print
Record from U.S.D.C. for the Southern District of Florida		
Complaint	2	1
Answer	4	2
Plaintiff's Exhibit No. 1—Illinois Personal Property Floater Policy No. 7 P.P.F. 117120	8	5
Verdict	14	6
Final judgment	14	6
Motion for judgment non obstante veredicto or in the alternative for a new trial	15	7
Order denying post trial motions and setting supersedeas amount	17	8
Notice of appeal	17	8
Transcript of trial proceedings	18	9
Testimony of John Clay—		
direct	18	9
Offer in evidence	20	10

RECORD PRESS, PRINTERS, NEW YORK, N. Y., DECEMBER 18, 1959

	Original	Print
Record from U.S.D.C. for the Southern District of Florida—Continued		
Transcript of trial proceedings—Continued		
Testimony of John Clay—		
direct	20	10
cross	35	14
redirect	56	20
recross	58	21
Mrs. Dorothy Lee—		
direct	88	22
cross	92	23
Excerpts from charge of the court	99	25
Statement of the points on which the appellant intends to rely on appeal	106	26
Appellant's designation of record on appeal	107	27
Clerk's certificate (omitted in printing)	111	28
Proceedings in U.S.C.A. for the Fifth Circuit	112	28
Minute entry of argument and submission (omitted in printing)	112	28
Opinion, Tuttle, J.	113	28
Dissenting opinion, Rives, J.	124	36
Judgment	126	37
Petition of John Clay for rehearing	131	38
Petition of State of Florida for rehearing	134	40
Minute entry of order denying petitions for rehearing	149	42
Clerk's certificate (omitted in printing)	150	42
Order allowing certiorari	151	42

[fol. 2]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

JOHN CLAY, Plaintiff,

v.

SUN INSURANCE OFFICE, LIMITED, a corporation organized under the laws of Great Britain, authorized to transact business in Florida.

COMPLAINT—Filed May 20, 1957

(1) Plaintiff is a citizen of the state of Florida residing at 1614 Brickel Drive, Fort Lauderdale and defendant is a corporation incorporated under the laws of the United Kingdom of Great Britain, but authorized to transact business in the State of Florida. The matter in controversy exceeds, exclusive of interest and cost, the sum of $3,000.00.

(2) On April 22, 1952, defendant for a premium of $966.01 paid by plaintiff executed and delivered to plaintiff its Personal Property Floater Policy insuring the plaintiff against theft and destruction of his property, said policy being No. 7 P.P. F. 117120, a copy of which is attached as Exhibit A, whereby defendant agreed to insure plaintiff for the term of 3 years beginning from the 22nd day of April, 1952 until the 22nd day of April, 1955, at noon, standard time. The policy insured against loss or damages the personal property stolen from the plaintiff, wherever located.

(3) While such contract of insurance was in full force and effect and on or about January 1, 1955 and while the plaintiff was living at J-C Ranch in Palm Beach County near Lake Harbor, Florida, plaintiff was robbed of certain personal property consisting of silverware, men's clothing, books and hunting equipment having a value of $9,000.00 and a painting of 4 generations of the Clay family, of a value of approximately $3,500.00 was slashed and partially

[fol. 3] destroyed, said painting being insured under the terms of the above-referred-to policy.

(4) Plaintiff has duly performed all the conditions of such policy on his part.

(5) Plaintiff duly notified the defendant of the robbery and loss sustained by the plaintiff thereby, and of the damages of the said painting and within the time specified in the policy of insurance caused to be served upon the defendant at the office of its agent, Bartholomay & Clarkson, 175 West Jackson Boulevard, Chicago 4, Illinois, due and proper proofs of loss which were duly received and retained by the defendant.

(6) Defendant has failed and refused to pay any part of this loss of $13,500.00 to plaintiff.

Wherefore, plaintiff demands judgment against defendant for the sum of $13,500.00, interest and cost. Plaintiff demands trial by jury.

Gibson & Gibson, By Paschal C. Reese, Attorneys for the Plaintiff, 209 South Olive Avenue, West Palm Beach, Florida.

Duly sworn to by Paschal C. Reese, jurat omitted in printing.

[fol. 4]

IN THE UNITED STATES DISTRICT COURT

ANSWER—Filed June 12, 1957

The Defendant, for answer to the Complaint, says:

1. In answering Paragraph 1, the defendant admits that it is a corporation incorporated under the laws of Great Britain and authorized to do business in Florida, but generally denies the remaining allegations contained therein.

2. In answering Paragraph 2, the defendant admits the issuance of Policy No. 7 P.P.F. 117120, with said effective dates of coverage, and further admits that Exhibit A is a [fol. 5] copy of the original of said policy. In further an-

swering said paragraph, the defendant denies the remaining allegations, but says that the policy sued upon is a Personal Property Floater Policy, commonly referred to as an inland Marine Policy, insuring against all risks of loss or damage.

3. In answering Paragraph 3, the defendant denies the same.

4. In answering Paragraph 4, the defendant denies the same.

5. In answering Paragraph 5, the defendant denies the same.

6. In answering Paragraph 6, the defendant admits the same.

By way of affirmative defenses, the defendant says:

7. By the terms and conditions of the policy of insurance sued upon it says this:

> "Suit Clause: No suit, action or proceeding for the recovery of any claim under this policy shall be sustainable in any court of law or equity unless the same be commenced within twelve (12) months next after discovery by the assured of the occurrence which gives rise to the claim. Provided, however, that if by the Laws of the state within which this Policy is issued such limitation is invalid, then any such claims shall be voided upless such action, suit or proceeding be commenced within the shortest limit of time permitted [fol. 6] by the laws of such state to be fixed herein."

This defendant says that the plaintiff discovered the occurrences which gave rise to the claim during the months of December 1954 and January 1955 or prior thereto. That suit was not commenced until May 20, 1957, which is long after the 12-month limitation provided for in the policy sued upon.

This defendant further says that the policy sued upon was issued in the State of Illinois and is an Illinois contract and all questions of substantive law are to be governed in accordance with the statutes and common law of

that state. That in accordance with the Laws of the State of Illinois, the said "Suit Clause" time limit is valid and enforceable.

8. The policy of insurance sued upon covers all risks of loss or damage to the property covered. This defendant says that the damage and loss complained of was not caused by a fortuitous or extraneous circumstances, but said damage and loss was caused by the deliberate act of Tyyne Delonn Clay, then wife of the insured John Clay, with the intent to destroy or dispose of said insured property. That the act of acts of Tyyne Delonn Clay and the subsequent loss or damage caused to the insured property is not covered under an all risk policy.

9. The defendant asserts its deductible provision of the policy sued upon in mitigation of the claimed damages and losses.

Wicker & Smith, 506 Ainsley Building, Miami, Flor-
[fol. 7] ida, by James A. Smith, Attorneys for Defendant.

Certificate of Service (omitted in printing).

ILLINOIS

PERSONAL PROPERTY FLOATER POLICY

(World Wide)

Policy No. 7 P.P.F. 117120

FOUNDED A. D. 1710

Sun Insurance Office

LIMITED

WM. H. McGEE & CO., INC.

MANAGERS MARINE DEPARTMENT

111 JOHN STREET, NEW YORK 7, N. Y.

BARTHOLOMAY & CLARKSON, General Agent

175 West Jackson Boulevard, Chicago 4, Ill.

556.60
120.00 DED. (A.
436.60 3(a)
522.41 3(b)

AMOUNT $ 54,350.00 Rate _____ Premium $ 266.01

~~The building(s) in which the Assured resides, located at _____ is or are of _____ construction and the premium charged for this Policy is predicated upon such construction.~~

OLD

In consideration of the stipulations herein named

And of [illegible] 01/100 Dollars, Premium,

Does Insure [illegible] hereinafter called the Assured,

Whose address is [illegible],

from the 22nd day of [illegible] 1952, at noon, to the 22nd day of [illegible] 1955, at noon, Standard Time at place of issuance, to an amount not exceeding [illegible] Dollars,

on the following described property:

PROPERTY COVERED

1. Personal property owned, used or worn by the person in whose name this Policy is issued and members of the Assured's family of the same household, while in all situations, except as hereinafter provided.

PERILS INSURED

2. All risks of loss of or damage to property covered except as hereinafter provided.

AMOUNTS OF INSURANCE

3. Insurance attaches only with respect to those items in this paragraph for which an amount is shown and only for such amount

ITEM	AMOUNT	
(a)	$ 32,000.00	On unscheduled personal property, except as hereinafter provided.
(b)	$ 22,350.00	On personal jewelry, watches, furs, fine arts and other property as per schedules attached hereto. Each item considered separately insured.
(c)	$ [illegible]	On unscheduled personal jewelry, watches and furs in addition to the amount of $250. provided in paragraph 5(b), against fire and lightning only.
TOTAL	$ 54,350.00	

(See Other Side for Paragraphs 4, 5 and 6)

DECLARATIONS OF THE ASSURED

7. The following are the approximate values of the unscheduled personal property, other than jewelry, watches and furs, as estimated by the Assured, at the time of issuance of this Policy:

	Wherever Located	(Of which the following amounts involve personal property ordinarily situated throughout the year at residences other than principal residence.)
(a) Silverware and pewter	$ 2,200.00	($ 40.00)
(b) Linens (including dining room and bedroom)	$ 1,500.00	($ 50.00)
(c) Clothing (Men's [illegible] Children's)		

estimated by the insured, at the time of delivery to the Carrier.

	Wherever Located	(Of which the following amounts involve personal property ordinarily situated throughout the year at residences other than principal residence.)
(a) Silverware and pewter	$ 2,200.00	($ 40.00)
(b) Linens (including dining room and bedroom)	$ 1,500.00	($ 50.00)
(c) Clothing (Men's, Women's, Children's)	$ 6,000.00	($ 150.00)
(d) Rugs (including floor coverings) and draperies	$ 2,000.00	($ NIL)
(e) Books	$ 100.00	($ NIL)
(f) Musical Instruments (including pianos)	$ 1,500.00	($ NIL)
(g) Television sets, radios, record players and records	$ 650.00	($ NIL)
(h) Paintings, etchings, pictures and other objects of art	$ 1,500.00	($ 50.00)
(i) China and glassware (including bric-a-brac)	$ 3,000.00	($ 50.00)
(j) Cameras and Photographic equipment	$ 650.00	($ NIL)
(k) Golf, hunting, fishing and other sports and hobby equipment	$ 1,100.00	($ NIL)
(l) Refrigerators, washing machines, stoves, electrical appliances and other kitchen equipment	$ 570.00	($ 30.00)
(m) Bedding (including blankets, comforters, covers, pillows, mattresses, and springs)	$ 1,500.00	($ 200.00)
(n) Furniture (including tables, chairs, sofas, desks, beds, chests, lamps, mirrors, clocks)	$11,000.00	($1,500.00)
(o) All other personal property (including wines, liquors, foodstuff, garden and lawn tools and equipment, trunks, traveling bags, children's playthings, miscellaneous articles in basement and attic) and professional equipment, if any, covered under paragraph 6(b)	$ 2,950.00	($ 100.00)
TOTAL	$36,600.00	($2,170.00)

NOTE: If the total value ordinarily situated throughout the year at residences other than the principal residence exceeds ten per cent of the amount of the insurance granted under Item (a) Paragraph 3, such excess value is not insured hereunder unless specifically endorsed hereon.

Countersigned this 22nd day of April 1952 at Chicago, Illinois

BARTHOLOMAY & CLARKSON, General Agent

By John L. Clarkson

Form 650-I - 1100 9 50 82776 - Printed in U.S.A.

EXTENSIONS

4 (a) Subject otherwise to all of the conditions of this Policy, Item (a) Paragraph 3, includes, at the sole option of the Assured, personal property of others while on the premises of the residences of the Assured, and personal property of servants while they are actually engaged in the service of the Assured and while in the physical custody of such servants outside such residences;

(b) The Company will also pay the actual loss of or damage (except by fire) to property of the Assured not specifically excluded by this Policy caused by theft or attempt thereat; or by vandalism or malicious mischief to the interior of the residences of the Assured;

but in no event shall the Company's combined liability for loss or damage covered under this Paragraph 4 and for insurance attaching under Item (a) Paragraph 3, exceed the amount of insurance shown in Item (a) Paragraph 3.

(c) Automatic Reinstatement of Losses. The following clause shall apply to unscheduled personal property covered hereunder: It is understood that the amount of insurance hereunder shall be reduced by the amount of any loss covered by this Policy, but the Company and the Assured shall be deemed to have agreed that the full amount insured be reinstated automatically in the event of loss and that a pro rata additional premium is payable from the date of the loss, if the entire amount of the loss exceeds $250.00.

LIMITATIONS

5 (a) As respects unscheduled personal property ordinarily situated throughout the year at residences other than the principal residence of the Assured, the Company shall not be liable in excess of ten per cent of the amount of insurance set forth in Item (a) Paragraph 3.

(b) As respects any one loss of unscheduled jewelry, watches and furs, the Company shall not be liable for more than $250.00 unless the loss is covered under Item (c) Paragraph 3, in which event the Company's liability for such loss is limited to the amount stated therein.

(c) As respects any one loss of money including numismatic property, the Company shall not be liable for more than $100. As respects any one loss of notes, securities, stamps including philatelic property, accounts, bills, deeds, evidences of debt, letters of credit, passports, documents and railroad and other tickets, the Company shall not be liable for more than $500.

EXCLUSIONS

6 This Policy does not insure

(a) animals; automobiles, motorcycles, aircraft, boats or other conveyances (except bicycles, tricycles, baby carriages, invalid chairs and similar conveniences), or their equipment or furnishings except when removed therefrom and actually on the premises of residences of the Assured; property of any Government or subdivision thereof;

(b) unscheduled property pertaining to a business, profession or occupation of the persons whose property is insured hereunder, excepting professional books, instruments and other professional equipment owned by the Assured while actually within the residences of the Assured;

(c) against breakage of eye glasses, glassware, statuary, marbles, bric-a-brac, porcelains and similar fragile articles (jewelry, watches, bronzes, cameras and photographic lenses excepted), unless occasioned by theft or attempt thereat, vandalism or malicious mischief, or by fire, lightning, windstorm, earthquake, flood, explosion, falling aircraft, rioters, strikers, collapse of building, accident to conveyance or other similar casualty, nor unless likewise occasioned, against marring or scratching of any property not specifically scheduled herein;

(d) against mechanical breakdown; against loss or damage to electrical apparatus caused by electricity other than lightning unless fire ensues and then only for loss or damage by such ensuing fire;

(e) against wear and tear; against loss or damage caused by dampness of atmosphere or extremes of temperature unless such loss or damage is directly caused by rain, snow, sleet, hail, bursting of pipes or apparatus; against deterioration, moth, vermin and inherent vice; against damage to property (watches, jewelry and furs excepted) occasioned by or actually resulting from any work thereon in the course of any refinishing, renovating or repairing process;

(f) property on exhibition at Fairgrounds or on the premises of any National or International Exposition unless such premises are specifically herein described;

(g) against loss or damage caused by or resulting from:

(1) hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack, (a) by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces; or (b) by military, naval or air forces; or (c) by an agent of any such government, power, authority or forces;

(2) any weapon of war employing atomic fission or radioactive force whether in time of peace or war;

(3) insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an occurrence, seizure or destruction under quarantine or Customs regulations, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade.

7. DECLARATIONS OF THE ASSURED (See Face)

8. Unless otherwise endorsed hereon, no other insurance against the risks hereby insured is permitted on the property covered hereunder [illegible] as to property described under Paragraphs 4(a) and (b), 5(b) and (c), 6 (a) and (b). If at the time of loss or [illegible] there is a [illegible] collectible insurance which would attach on the property descr[illegible] agraphs

7. DECLARATIONS OF THE ASSURED (See Face)

8. Unless otherwise endorsed hereon, no other insurance against the risks hereby insured is permitted on the property covered hereunder except as to property described under Paragraphs 4(a) and (b), 5(b) and (c), 6 (a) and (b). If at the time of loss or damage, there is any other valid and collectible insurance which would attach on the property described in Paragraphs 4(a) and (b), 5(b) and (c), 6(a) and (b) had this Policy not been effected, then this insurance shall apply only as excess insurance over all such other insurance and in no event as contributing insurance.

GENERAL CONDITIONS

Valuation Clause:—This Company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs and the loss or damage shall be ascertained or estimated according to such actual cash value with proper deduction for depreciation, however caused, and shall in no event exceed what it would then cost to repair or replace the same with material of like kind and quality.

It is understood and agreed that, in the event of loss of or damage to any article or articles which are a part of a set, the measure of loss or damage to such article or articles shall be a reasonable and fair proportion of the total value of the set, giving consideration to the importance of said article or articles; but in no event shall such loss or damage be construed to mean total loss of set.

In case of loss or injury to any part of the insured property consisting, when complete for sale or use, of several parts, this Company shall only be liable for the insured value of the part lost or damaged.

Appraisal Clause:—If the Assured and the Company fail to agree as to the amount of loss, each shall, on the written demand of either, made within sixty days after receipt of proof of loss by the Company, select a competent and disinterested appraiser, and the appraisal shall be made at a reasonable time and place. The appraisers shall first select a competent and disinterested umpire, and failing for fifteen days to agree upon such umpire, then, on the request of the Assured or the Company, such umpire shall be selected by a judge of a court of record in the state in which such appraisal is pending. The appraisers shall then appraise the loss, stating separately the actual cash value at the time of loss and the amount of loss, and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The Assured and the Company shall each pay his or its chosen appraiser and shall bear equally the other expenses of the appraisal and umpire.

The Company shall not be held to have waived any of its rights by any act relating to appraisal.

Bailee Clause:—This insurance shall in no wise inure directly or indirectly to the benefit of any carrier or other bailee.

Notice of Loss Clause:—The Assured shall as soon as practicable report to this Company or its agent every loss or damage which may become a claim under this Policy and shall also file with the Company or its agent within ninety (90) days from date of loss a detailed sworn proof of loss. Failure by the Assured to report the said loss or damage and to file such sworn proof of loss as hereinbefore provided shall invalidate any claim under this Policy for such loss.

Sue and Labor Clause:—In case of loss or damage, it shall be lawful and necessary for the Assured, his or their factors, servants and assigns, to sue, labor, and travel for, in and about the defense, safeguard and recovery of the property insured hereunder, or any part thereof without prejudice to this insurance; nor shall the acts of the Assured or this Company, in recovering, saving and preserving the property insured in case of loss or damage, be considered a waiver or an acceptance of abandonment; to the charge whereof this Company will contribute according to the rate and quantity of the sum herein insured.

Examination Under Oath Clause:—The Assured shall submit, and so far as is within his or their power shall cause all other persons interested in the property and members of the household and employees to submit, to examinations under oath by any persons named by the Company, relative to any and all matters in connection with a claim and subscribe the same; and shall produce for examination all books of account, bills, invoices, and other vouchers or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the Company or its representatives, and shall permit extracts and copies thereof to be made.

Misrepresentation and Fraud Clause:—This Policy shall be void if the Assured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof or in case of any fraud, attempted fraud or false swearing by the Assured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

Payment of Loss Clause:—All adjusted claims shall be paid or made good to the Assured within sixty (60) days after presentation and acceptance of satisfactory proof of interest and loss at the office of this Company.

No loss shall be paid hereunder if the Assured has collected the same from others.

Subrogation Clause:—In the event of any payment under this Policy the Company shall be subrogated to all the Assured's rights of recovery therefor against any person or organization and the Assured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Assured shall do nothing after loss to prejudice such rights.

Suit Clause:—No suit, action or proceeding for the recovery of any claim under this Policy shall be sustainable in any court of law or equity unless the same be commenced within twelve (12) months next after discovery by the Assured of the occurrence which gives rise to the claim. Provided, however, that if by the laws of the state within which this Policy is issued such limitation is invalid, then any such claims shall be void unless such action, suit or proceeding be commenced within the shortest limit of time permitted by the laws of such state to be fixed herein.

Cancelation Clause:—This Policy may be canceled by the Assured by mailing to the Company written notice stating when thereafter such cancelation shall be effective. This Policy may be canceled by the Company by mailing to the Assured at the address shown in this Policy or last known address written notice stating when not less than five (5) days thereafter such cancelation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice and the effective date of cancelation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the Assured or by the Company shall be equivalent to mailing.

If the Assured cancels, earned premiums shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, earned premiums shall be computed pro rata. Premium adjustment may be made at the time cancelation is effected and, if not then made, shall be made as soon as practicable after cancelation becomes effective. The Company's check or the check of its representative mailed or delivered as aforesaid shall be a sufficient tender of any refund of premium due to the Assured.

Schedules and Endorsements
To Be Attached Here

BARTHOLOMAY & CLARKSON AGENT

IM 2223
(Ed. 12-27-45)

PERSONAL PROPERTY INSURANCE
($25.00 or $15.00 Deductible Clause)

Attached to and forming part of Policy Number 7 Em 7166 issued to

by at its Agency

located (city and state) Date of Endorsement

Each claim for loss or damage (separately occurring) to unscheduled property shall be adjusted separately and from the amount of each such adjusted claim or the applicable limit of liability, whichever is less, the sum of $25.00 (INSERT $25.00 OR $15.00) shall be deducted. Such deductible shall not apply, however, to loss or damage by fire, lightning, windstorm, cyclone, tornado, hail, explosion, riot, riot attending strike, smoke, damage by vehicles or aircraft, burglary or hold-up.

"Burglary" as used in this endorsement means the felonious abstraction of the insured property from within a building or room by any person or persons making felonious entry therein by actual force and violence of which there shall be visible marks made upon the exterior of such premises at the place of such entry by tools, explosives, electricity or chemicals.

All other terms and conditions of this policy remain unchanged. BARTHOLOMAY & CLARKSON, AGENT

Agent.

BY John L. Clarkson

AUTHENTIC

"Burglary" as used in this endorsement means the felonious abstraction of the insured property from within a building or room by any person or persons making felonious entry therein by actual force and violence of which there shall be visible marks made upon the exterior of such premises at the place of such entry by tools, explosives, electricity or chemicals.

All other terms and conditions of this policy remain unchanged. BARTHOLOMAY & CLARKSON, AGENT

.....Agent.

BY John L. Clarkson

AUTHENTIC

This Policy is made and accepted subject to the foregoing stipulations and conditions which are hereby specially referred to and made a part of this Policy, together with such other provisions, agreements, or conditions as may be endorsed hereon or added hereto; and no officer, agent or other representative of this Company shall have power to waive or be deemed to have waived any provisions or conditions of this Policy unless such waiver, if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this Policy exist or be claimed by the Assured unless so written or attached.

Provisions required by law to be stated in this Policy:—This Policy is in a stock corporation.

IN WITNESS WHEREOF, this Company has executed and attested these presents, but this Policy shall not be valid unless countersigned on the declarations page by Wm. H. McGEE & CO., Inc., or a duly authorized agent of this Company.

Wm. H. McGEE & CO., Inc., Managers Marine Department

H. L. Clarkson PRESIDENT

42nd APRIL 52 CHICAGO, ILLINOIS

10

[fol. 10]

[fol. 11]

In Event of Loss or Damage

Immediately notify the Agent who issued this policy, or the nearest office of this Company listed below:

Wm. H [illegible]Gee & Co., Inc.
MANAG[illegible] MARINE DEPARTMENT
111 JOHN S[illegible] T, NEW YORK 7, N. Y.

BALTIMORE 2:
Garrett Building, South & Redwood Sts.

BOSTON 9:
4 State Street

CHICAGO 4:
175 West Jackson Boulevard

COLUMBUS 15, O.:
401 High-Long Building, 5. E. Long St.

DALLAS 1:
Gilbert Easley, Correspondent,
112 National City Building

HOUSTON 2:
Chdes D. Bailey, Correspondent,
We Building

LOS ANGELES 13:
548 o. Spring Street

NEW ORLEANS 12:
111 Tulane Avenue

PHILADELPHIA 6:
Pulc Ledger Building

SAN FRNCISCO 4:
30 California Street

SEATTL 4:
14(Dexter Horton Building,
Seond & Cherry Sts.

TAMPA
405 allace S Annex

ILLINOIS

Policy No. 7 P.P.F. 117120

ASSURED [illegible] CLAY

FROM [illegible]. 22, 1952

TO [illegible]. 22, 1955

PERSONAL PROPERTY FLOATER POLICY

Sun Insurance Office
LIMITED

FOUNDED A.D. 1710

WM. H. McGEE & CO., INC.
MANAGERS MARINE DEPARTMENT
111 JOHN STREET, NEW YORK 7, N. Y.

BARTHOLOMAY & CLARKSON
General Agents
175 West Jackson Boulevard
Chicago 4, Ill.
Tel. Wabash 0163

Standard protection

FINE ARTS RIDER NO. 1

(One Location)

Attached to and forming part of Policy Number 7FFF117120 issued to JOHN CLAY

by SUN INSURANCE OFFICE, LTD. at its Agency

located (city and state) CHICAGO, ILLINOIS Date of Endorsement APRIL 22, 1952

[fol. 12]

This insurance covers the property insured hereunder while on exhibition or otherwise

(a) at 1250 LAKE SHORE DRIVE, CHICAGO, ILLINOIS, and

(b) elsewhere within the limits of the Continental United States and Canada (excluding the premises of fair grounds or of any national or international exposition unless endorsed hereon) for not exceeding 10% of the aggregate amount of the schedule, but in event the amount at risk exceeds 10%, notice shall be given this Company within 72 hours from time of leaving location specified in (a) above and additional premium paid, if required.

All other terms and conditions of this policy remain unchanged.

BARTHOLOMAY & CLARKSON, AGENT

BY John L. Clarkson Agent

AUTHENTIC

BARTHOLOMAY & CLARKSON, AGENT

ITEM NO.	ARTICLE	AMOUNT INSURED
1.	ONE 22" X 35" NUMBER 657 "LAGO MAGGOIRE", THE ITALIAN MODERN 19th CENTURY, BY J. B. PYNE, 1865.	$ 200.00
2.	ONE 22" X 31" "GARDEN AND PATIO", BY V. RICARDO, ITALIAN.	200.00
3.	ONE 16" X 20" LANDSCAPE WITH CATTLE.	50.00
4.	ONE 11" X 14" LANDSCAPE, STREAM THROUGH WOODS.	25.00
5.	ONE WINTER SNOW SCENE WITH THATCH HOUSE	25.00
6.	ONE WINTER IN THE WOODS BY C. BANAN WITH A HAND CARVED FRAME	300.00
		$ 800.00

APP. 11-24-48 BY LEO A. MARZOLO,
1012 N. DEARBORN ST., CHICAGO 10, ILLINOIS

Wm. H. McGEE & CO., Inc.
Form 1318B 20M 6-48 80337 Printed in U.S.A.

ITEM NO.	ARTICLE	AMOUNT INSURED
	FUR SCHEDULE	
1.	ONE ERMINE 3/4 LENGTH CAPE	800.00
2.	ONE PERSIAN LAMB COAT AND HOOD	1,200.00
3.	ONE MINK COAT	2,000.00
4.	ONE SILVER BLUE MINK STOLE	1,000.00
	FUR TOTAL	$5,000.00
	#4 APP. 5-4-50 BY MARSHALL FUR CO., 39 SO. STATE ST., CHICAGO 3, ILLINOIS	
	JEWELRY SCHEDULE	
1.	ONE LADIES' 14K YELLOW GOLD RING, 1 LARGE DIAMOND SET IN PLATINUM BEZEL 6.10 CT., GOOD QUALITY AND 24 ORIENTAL CALIBRE RUBIES SET AROUND DIAMOND IN PEAR SHAPE DESIGN. IN CENTER OF RUBY DESIGN ARE 12 SMALL DIAMONDS ALL GOOD QUALITY	$10,000.00
2.	ONE PAIR OF LARGE LEAF DESIGNED EARRINGS, 14K PINK GOLD AND PLATINUM TRIM FOR DIAMONDS. SET WITH 20 DIAMONDS ABOUT .50 CT., 8 SMALL DIAMONDS AND ORIENTAL RUBIES	350.00
3.	ONE 17J ETERNA WATCH IN 14K WHITE GOLD CASE SET IN CENTER OF 14 KT. YELLOW GOLD 1[illegible] WIDE TAPERED TO 1" ON THE BOTTOM BRACELET AND 2 SMALL DIAMONDS SET IN CASE, PLATINUM ORNAMENT SET ON EACH SIDE OF WATCH WITH 1 LARGE DIAMOND WEIGHING ABOUT .35 CT. AND 22 SMALLER DIAMONDS, 12 RUBIES ON EACH SIDE OF WATCH. (24 DIAMONDS AND 12 RUBIES)	2,000.00
4.	ONE LADIES DIAMOND RING, PLATINUM HANDMADE MOUNTING SET WITH ONE CENTER TRIANGLE DIAMOND, BLUE WHITE, 3 CTS., AND 2 SIDE MARQUISE DIAMONDS, BLUE WHITE .75 CTS. EACH	4,200.00
	JEWELRY TOTAL	$16,550.00
	#1 APP. 11-26-48, #2 APP. 11-18-48 BY I. L. HELLER, 55 E. WASHINGTON ST., CHICAGO, #3 APP. 2-3-49 BY I. L. HELLER #4 APP. 5-1-52 BY AMERICAN DIAMOND SYNDICATE, BY EDGAR M. ZIMMERMAN, 37 S. WABASH AVE., CHICAGO.	

[fol. 13]

[fol. 14]

IN UNITED STATES DISTRICT COURT

VERDICT—June 4, 1958

West Palm Beach, Florida
June 4, 1958.

We, the Jury find in favor of the Plaintiff, John Clay, and assess Plaintiffs damages in the sum of $5,100.00, and assess his damages for attorney's fees reasonably incurred in the amount of $1,700.00.

So Say We All.

James M. Hawn, Foreman.

IN UNITED STATES DISTRICT COURT

FINAL JUDGMENT—June 4, 1958

Upon consideration of the Verdict of the Jury returned herein, it is thereupon,

Considered and Ordered that Final Judgment be and it is hereby entered in the said cause in favor of the Plaintiff, John Clay, and against the Defendant, Sun Insurance Office, Limited in the sum of Fifty-one Hundred Dollars ($5,100.00) together with attorney's fees reasonably incurred in the amount of Seventeen Hundred Dollars ($1,700.00) together with legal interest thereon from the date hereof, and may recover his costs in this case incurred, said costs to be taxed by the Clerk of this Court, and that the said Plaintiff have execution therefore, it is

[fol. 15] Done and Ordered at West Palm Beach, Florida, this 4th day of June A.D. 1958.

Julian A. Blake, Clerk, United States District Court, Southern District of Florida, By Joseph I. Bogart, Deputy Clerk (Seal).

IN THE UNITED STATES DISTRICT COURT

MOTION FOR JUDGMENT NON OBSTANTE VEREDICTO OR IN THE ALTERNATIVE FOR A NEW TRIAL—Filed June 12, 1958

Comes Now the defendant, Sun Insurance Office, Limited, and moves the Court to enter a judgment in its favor non obstante veredicto, pursuant to Rule 50 (b) of the Federal Rules of Civil Procedure, or in the alternative to grant it a new trial, pursuant to Rule 59 of the Federal Rules of Civil Procedure, and would show unto this Honorable Court for its aforementioned motion that:

1. The verdict is contrary to the law.

2. The verdict is contrary to the evidence.

3. The verdict is contrary to the law and the evidence.

4. The Court erred in charging the jury as to larceny as same relates to the acts and conduct of the plaintiff's wife under the facts and circumstances and evidence of this case.

5. The Court erred in charging the jury as to larceny in its general application to the facts and circumstances and [fol. 16] evidence of this case.

6. That a verdict should be entered in favor of the defendant, Sun Insurance Office, Limited, on the basis that the insurance contract in this case does not cover losses by the willful, malicious and destructive acts of a member of the named insured's household and an additional insured under the said insurance contract, to wit, the plaintiff's wife, Tyyne Delomn Clay.

7. In construing the twelve-month suit clause contained in the said insurance contract involved in this case, the law to be applied in regard to this said clause is governed by the substantive law of the State of Illinois and not the law of the forum and, therefore, the suit having been brought after the twelve-month period as contained in the said insurance contract, said suit is barred from prosecution by the plaintiff.

Wherefore, the defendant moves this Honorable Court to enter a judgment non obstante veredicto or in the alternative to grant it a new trial.

Wicker & Smith, 506 Ainsley Building, Miami, Florida, By Joe C. Brannen, Attorneys for Defendant.

Certificate of Service (omitted in printing).

[fol. 17]

IN THE UNITED STATES DISTRICT COURT

ORDER DENYING POST TRIAL MOTIONS AND SETTING SUPERSEDEAS AMOUNT—Filed July 15, 1958

This cause coming on to be heard on defendant's Motion for Judgment Non Obstante Veredicto or in the Alternative for a New Trial, and after hearing argument of counsel and being fully advised in the premises, it is

Considered, Ordered and Adjudged that said motions be and the same are hereby denied.

Upon oral motion of the defendant for the setting of a supersedeas amount and the parties being in agreement thereto, it is further

Ordered and Adjudged that the supersedeas bond be and the same is hereby set in the amount of $7,500.00.

Done and Ordered this 11th day of July, 1958.

Emett C. Choate, United States District Judge.

IN THE UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed Aug. 8, 1958

Notice is hereby given that Sun Insurance Office, Limited, the above captioned defendant, hereby appeals to the United States Circuit Court of Appeals for the Fifth Circuit from the Final Judgment entered June 4, 1958.

Joe C. Brannen

[fol. 18] Wicker & Smith, 506 Ainsley Building, Miami, Florida, Attorneys for Appellant, Sun Insurance Office, Limited.

Certificate of Service (omitted in printing).

IN THE UNITED STATES DISTRICT COURT

Transcript of Trial Proceedings—June 4, 1958

West Palm Beach, Florida.

The above entitled cause came on for hearing before the Hon. Emett C. Choate, United States District Judge, and a jury duly and regularly empannelled and sworn to try the same in open Court, at West Palm Beach, Florida, on June 4, 1958.

Appearances: Paschal C. Reese Esq., of the law firm of Gibson & Gibson, appearing on behalf of the Plaintiff. Joe C. Brannen Esq., of the law firm of Wicker & Smith, appearing on behalf of the Defendant.

Thereupon: JOHN CLAY was called as a witness on his own behalf, having first been duly sworn, was examined [fol. 19] and testified as follows:

Direct examination.

By Mr. Reese:

Q. Please state your name.
A. John Clay.
Q. Mr. Clay, are you the plaintiff in this suit?
A. I am.
Q. Where do you live at this time?
A. Fort Lauderdale.
Q. Where did you live in the latter part of 1954 and early in 1955?
A. On my ranch at Lake Harbor, Florida.

Q. What is the name of that ranch?
A. The J. C. Ranch.
Q. Is that in Palm Beach County?
A. Yes.
Q. Did you have certain personal effects in the dwelling house at the Lake Harbor address during the latter part of 1954 and the early part of 1955?
A. Yes, I did.
Q. I hand you an insurance policy and ask you if you recognize that policy?
A. Yes, I do. That is a policy that I insured under.
Q. Did this policy issued by the Sun Insurance office insure the property located in your dwelling?
A. Yes, sir, it does.

[fol. 20] OFFER IN EVIDENCE

Mr. Reese: At this time, your Honor, I would like to offer this in evidence.
The Court: It will be admitted, having been stipulated to at pretrial.

(Thereupon the instrument was marked in evidence as Plaintiff's Exhibit 1.)

The Court: This is the policy stipulated to be the policy sued upon and which was in effect at the time of the alleged loss.
Mr. Reese: That's right.

By Mr. Reese:

Q. Now, Mr. Clay, did any of the personal property covered by that policy in your dwelling house disappear?
A. Yes it did, sir.
Q. Will you please recount for the benefit of the jury and the Judge, the articles that were removed from your house?
A. The first articles that were removed from the house was a tea set that had belonged to my family for a great number of years and had been brought over by my father from Scotland. It was a large tea set with the various things that go with a tea set, with the tray. I came back [fol. 21] to the house one day and that was missing, and

I asked my then wife what happened to it. She said, "Oh, I got tired of polishing it and I put it out in the storage house at Fort Lauderdale."

Q. Did you go to the storage warehouse and inquire as to whether or not the tea set was there?

A. The next day I went down to the storage house and asked if she had put that in storage and they said no, nobody had put anything of yours in the storage house, taken it in or taken it out.

Q. Mr. Clay, did you demand a return of the article?

A. I demanded that she produce the tea set and she made some kind of excuse that it has hidden some place.

* * * * * * *

[fol. 22] Q. Do you know whether there were any other articles missing?

A. Yes. There were twelve silver service plates that you put under the plate, and they were also taken.

Q. Were those sterling?

A. Those were sterling silver.

Q. Did they disappear at the same time as this tea set?

A. Yes, they did.

Q. What was the value of the twelve service plates?

A. They are valued at $1200. There was one dozen of them at $100 apiece.

Q. Is that all the silver that was missing?

A. Yes, that was about all. There were several small things which I have thought of since, but I didn't list.

Q. Now, go ahead, Mr. Clay, and recount some of the other personal property that was taken from the house. Did you have a gun rack in the house?

A. Yes.

Q. Was that gun rack locked?

A. Yes.

[fol. 23] Q. How many guns did you have in that rack?

A. I had a .410 pump. I had a double-barreled John Dixon gun from Edinburgh, Scotland, and I had an over hundred 12 gauge Browning and also a 20 gauge pump and a real old shotgun that wasn't worth anything.

Q. What became of those guns?

A. I couldn't find the guns.

Q. Had the cabinet been forced open?
A. Yes, it was broken open.

Mr. Brannen: I hate to object, but I think he is leading Mr. Clay a little bit.
The Court: Yes, I think he is, be careful.

By Mr. Reese:

Q. Go ahead and tell the Court what happened to the guns.
A. The guns were found underneath my manager's house, Mr. Buck Lee, and they were put there in the muck, the water and muck that was underneath that house. It is in the Everglades and it is pretty bad stuff out there, and they laid there for, I presume, about three weeks, until one of his children found them. And also my fishing tackle was put underneath there; and it completely ruined the guns. One of them I had repaired, but the others weren't worth repairing, the .410 and the John Dixon gun from Edinburgh.

* * * * * * *

[fol. 28] By Mr. Reese:

Q. Now, Mr. Clay, will you tell the jury and the Court about the pictures that you have, the picture that you had, a painting?
A. The picture referred to is a picture about four by five feet. It was a picture of four generations of my family, an oil painting which at one time I was asked to put in the museum in Chicago. It was a very, very fine picture painted by a man named Frain in Scotland, and that picture was slashed with a knife. Fortunately, it can be repaired.
Q. Did you see the picture slashed?
A. Yes, I saw the picture slashed.
Q. Who slashed it?
A. My wife.

* * * * * * *

[fol. 30] Q. Now, Mr. Clay, will you please tell the Judge and the Jury what happened to your clothing?

A. I was away from the ranch and when I came back to Palm Beach I was told by my attorneys that the deputy sheriffs had been out at the ranch and they discovered a fire there.

Q. Don't tell the jury what somebody told you. You tell them what you saw when you got there.

A. I didn't see anything. The house was completely—the drawers and everything was just bare, but my clothing had disappeared, absolutely every stitch I owned. It disappeared aside from the shirt that I had on my back.

Q. Do you know what happened to the clothing?

A. It was burned up—destroyed.

• • • • • • •

[fol. 33] By Mr. Reese:

Q. Now, Mr. Clay, does that cover all the articles that you claim were missing and that were reported to the insurance company?

A. No; there was a wrist watch that was valued—I think it was around $35.00 I paid for it, a waterproof one, and an Eastman Kodak in a case.

Q. What kind of Kodak was that?

A. A Kodak No. 35, or a Kodak 135. It was a still camera. I think they call it a Kodak 135. They cost around $75.00 with the case.

Q. Is that what you paid for it?

A. Yes. Now, there was a book that was written by my father. The title of it was "My Life on the Ranch." That book is now being offered, if anybody can get one, for $40.00. I have had many letters from universities and it is to do with the livestock in the West in previous years which my father knew a great deal about, and he wrote a book about it. And that book was also destroyed. That was an autographed copy by him, incidentally. There were other valuable books on hunting and fishing there which were also destroyed.

• • • • • • •

[fol. 34] Q. And all these were taken from your residence?
A. That is correct.
Q. When did these things actually disappear?
A. In December and January of 1954 and 1955.
Q. Mr. Clay, when did you move to the State of Florida?
A. 1952.
Q. Did you buy property in the state?
A. Yes. I bought a ranch at that time.
Q. Is that the ranch where you were living?
A. Yes.
Q. Have you been a resident and citizen of Florida since 1952?
A. I have.

* * * * * * *

[fol. 35] Cross examination.

By Mr. Brannen:

Q. Mr. Clay, referring to Plaintiff's Exhibit 1 which is the insurance policy in this case, when was this policy taken out? Is it April 22, 1952?
A. Yes.
Q. And at that time were you a resident of the State of Illinois?
A. I believe so, yes.
Q. What was your address that you gave on the policy as being your residence?
A. 1250 Lake Shore Drive.
Q. And that is in Chicago, Illinois, is it not?
A. Yes.
Q. Now, in the list of declarations wherein you list the items that you wanted covered, you listed these items that have been enumerated on the board, did you not?
A. Not all of them.
Q. Also listed on this list was some property that belonged to your wife. Is that right?
A. That's right.
Q. And you were married at the time you took this policy out, to your wife?
[fol. 36] A. Yes.

* * * * * * *

[fol. 39] Q. You have testified on direct examination concerning these losses, and if I understand you correctly, it is your testimony that these losses occurred in November, December and January of 1954. Is that correct?

A. That's right.

Q. That would be November and December of 1954 and January of 1955.

A. Yes.

Q. Now, these particular items, did you miss them all at one time, or did you discover them over that three months period?

A. The tea set and the silver plates disappeared in November. All the rest of the stuff was in December.

Q. All the rest of these items you have listed here were in December, 1954?

A. Except the family pictures was destroyed in—I be-
[fol. 40] lieve that was in December.

Q. In other words, everything but the tea set and the twelve silver plates was either lost or destroyed in December 1954, is that right?

A. That's right.

Q. Now, were you present when this tea set and the silver plates, were you present in your home at the time they disappeared, or had you been away on a trip?

A. I had been away for a day, I think.

Q. Before you left did you see the tea set and twelve silver service plates?

A. Oh, yes.

Q. Where did you go?

A. I went down to Fort Lauderdale, I think, to try to sell some hay, and I was away and when I came back I missed it.

Q. At that time were you having some marital discord with your wife?

A. It had started.

Q. And if I understand you correctly, she told you that she had taken the silver, both the tea set and the silver plates, and placed it in storage?

A. That is correct.

Q. And you checked that out later and found it not to be so?

A. That is correct.

[fol. 41] Q. And subsequently you asked her to give you the stub, and she told you what?

A. She didn't know where it was.

Q. These other items, including the guns and clothes, you lost that, and that would be in the following month; is that right? This happened in November and you lost these other articles in December, is that correct?

A. December or January.

Q. Now, I take it, then, that in December of 1954 that the marital discord had developed to a pretty bad situation; is that correct, sir?

A. It had developed, yes.

Q. Now, did she cut the picture before these other articles disappeared, or was it after they had disappeared?

A. Before.

Q. Would you say that that would be in the earlier part of December, 1954?

A. Yes.

Q. Now, were you away from the home, away from your home, that is, out at the ranch, when these articles of clothing were destroyed, or were you present on the premises?

A. No, I was away.

Q. Where were you?

A. I was on another trip on business for the ranch.

Q. You did not leave the ranch because of any marital [fol. 42] discord?

A. No.

Q. It was a business trip?

A. Yes.

Q. And your wife had already cut this picture at the time?

A. Yes.

Q. Now, this gun rack, did that have a lock on it?

A. Yes.

Q. Did you have the key to the lock?

A. Yes.

Q. Did your wife have a key to the lock?

A. No.

Q. When you came back you found that the lock had been damaged and the case opened and the guns were gone. Is that right?

A. Yes.

Q. Did you say anything to your wife about that?

A. I didn't see her after that.

Q. Where was she?

A. This is after I left the ranch. You see, I came back from that trip and I came to my attorney's office and the deputy sheriffs had called from Belle Glade and told me not to come back to the ranch, so I stayed away, and I didn't ever go back then. That is when all that stuff disappeared.

Q. You went away on a trip. That would be in December? [fol. 43] A. I would say in January when all that other stuff disappeared.

Q. Are you saying now that it disappeared in January, 1955?

A. Yes, because that is when I left the ranch.

Q. You want to change your testimony, then, in regard to these other losses?

A. Just as to the time.

Q. That is what I mean.

A. It would be January. I was just thinking over what I said there. It would be January when I left the ranch for good. And I left the ranch for good because I had heard that she had burned up all of my stuff, and that is the stuff that I have listed there.

Q. I am a little bit confused here. If I understand your testimony before, you said that all of these other losses occurred in December, 1954.

A. I am wrong about that.

Q. Now you say that they disappeared in January of 1955. Is it your testimony that all of these other articles, aside from the tea set and twelve service plates, disappeared in January, 1955?

A. Yes, and the family picture. That's right. December was too early because I left the ranch in January.

Q. Now, was the picture cut in December or January?

A. The picture was cut in the last part of December. [fol. 44] Q. Then you left your home in January; is that right?

A. That's right.

Q. And you say that you left your home for the purpose of going on a business trip?

A. That's right.

Q. How long were you gone before you contacted your attorneys?

A. I think a couple of days.

Q. Where did you go on that business trip?

A. I think I went down to Fort Lauderdale again and I stayed at some hotel there. I don't remember which one.

Q. When you finished your business in Fort Lauderdale you came back to West Palm Beach and went to see your attorneys?

A. That's right.

Q. And at that time—this in January, 1955—you were informed—I think you were going to tell us what you learned. Would you tell me?

A. I was informed that all my clothes had been burned up and everything I had had been burned up and I was informed that I should not go back to the ranch by the Police Department in Belle Glade.

Q. What was the reason?

A. Well, they didn't know what else she was going to do.

Q. Now, when you left to go on this business trip did you have any idea of what was transpiring in your wife's mind?

[fol. 45] A. No, I didn't.

Q. She had previously cut the picture, had she not?

A. Yes, but I removed that from the house.

Q. That indicated something to you when she cut the picture, didn't it?

A. Naturally.

Q. Did you start any divorce proceedings at that time?

A. No.

* * * * * * *

[fol. 51] Q. Now, you subsequently went through divorce proceedings with your wife wherein you secured a divorce; is that right?

A. That's right.

* * * * * * *

[fol. 52] By Mr. Brannen:

Q. During the divorce proceedings, did you seek to have the Court require Mrs. Clay to give you back any of these articles listed on the board?

[fol. 53] A. I asked my attorney to try to get—what the Court did about it, I don't know.

Q. You requested your attorney to get the Court to require her to give these articles back?

A. Whether that was allowed or not, I don't know. The record will show it.

Q. Did you, in fact, ever get them back?

A. No, of course not.

* * * * * * *

By Mr. Brannen:

Q. Was there actually any property settlement whereby you were to get certain property and she was to get certain property?

A. Yes.

Q. Do you know of your own knowledge whether or not in that property settlement you requested through the Court Mrs. Clay to return any of these articles to you?

A. I don't know what the attorneys did on the Court [fol. 54] proceedings. I would have to go back to the Court record to find out what was done about that. I cannot remember just exactly what was done about that, but I know we didn't get the tea set back.

Q. It was during the court proceedings and the testimony during the divorce court proceedings that Mrs. Clay admitted that she had tried to sell the tea set and the silver plates; is that right?

A. Yes, sir.

Q. And that is where you obtained your knowledge of that fact?

A. That's right.

Q. And she was under oath at that time, was she not?

A. I presume so.

Q. Mr. Clay, do you know the date that you first notified the insurance company of these items that you are claiming?

A. I think that is in the record here. I haven't got the date in my head.

Mr. Brannen: Can we stipulate to that?

Mr. Reese: February 1, 1955.

The Witness: I think that is approximately right. Right after it was done. After we missed the stuff.

[fol. 55] Mr. Brannen: I think, Mr. Reese, you have agreed with me to stipulate that the insurance company investigated this under reservation rights.

Mr. Reese: That's right.

• • • • • • •

[fol. 56] Redirect examination.

By Mr. Reese:

Q. Mr. Clay, when did you actually buy the JC Ranch?

A. 1952.

Q. And you owned the JC Ranch while you were living at the Clewiston Inn?

A. Yes.

Q. And you operated the ranch from the Clewiston Inn?

A. Yes, certainly.

Q. Do you remember the property settlement that was in the final decree of your divorce?

A. Yes, I remember it very well.

Q. Would it have any reference at all to this property here?

A. No.

Q. It referred to property outside of the State of Florida, didn't it?

A. That's true.

[fol. 57] Mr. Brannen: He is slightly leading.

The Court: Yes.

Mr. Reese: Your Honor, I agree it is, but he had implied—

The Court: Go ahead, don't lead him.

Mr. Reese: I don't have any further questions, your Honor.

Mr. Brannen: No further questions.

The Court: Do you know the firm of Bartholomay & Clarkson Insurance Agents?

The Witness: They were the agents that I took my insurance out through.

The Court: Did you have any other insurance with them?

The Witness: I have had, yes. For a number of years I have dealt with them entirely.

The Court: Did you communicate with them after you came to Florida?

[fol. 58] The Witness: Yes.

The Court: 1250 Lake Shore Drive, Chicago, Illinois, what is that?

The Witness: That was my wife's house which was sold when we came down to Florida.

The Court: Sold in 1952?

The Witness: Yes.

Mr. Reese: You may come down.

Mr. Brannen: Just one more question, if I may.

The Court: Yes.

Recross examination.

By Mr. Brannen:

* * * * * * *

[fol. 59] Q. Let me ask you whether or not you remember being asked these questions and giving these answers—on page 3-A of the plaintiff's deposition:

[fol. 60] "Q. You live in and considered Illinois as your home at that time?"

And your answer was:

"Yes." The next question is:

"Q. I notice you paid a premium here of $900 and some dollars. Did you pay that in cash to Bartholomay when you got the policy?"

And you answered:

"No, by check."

The next question is:

"I mean you did not make continuous payments on it. You just paid in one lump sum when you got the policy?"

And your answer:

"I presume that I did."

The next questions:

"And the policy was delivered to you there in Chicago by Bartholomay?"

And you answered:

"Yes."

The Witness: I believe that was true, yes.

* * * * * * *

[fol. 88] Mrs. Dorothy Lee was called as a witness on behalf of the plaintiff, and having first been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reese:

* * * * * * *

[fol. 90] Q. Do you remember an occasion when some of Mr. Clay's clothes were destroyed?

A. Yes, sir.

Q. Will you please tell the Court and jury what you know about that occasion?

A. Well, my son was mowing the lawn and he came in [fol. 91] and said; "Mother, Mrs. Clay came out and asked if I had any gas left from the mowing machine." It was a five gallon can and he only used a small amount out of it. He said she took the gas can and went back to the house with it and he saw her loading clothes in the car and he came in the house and told me, and we watched her pile these clothes in the car and she had all them put in the back of the car and the front of the car. There were so many that she couldn't close the trunk and some fell out in the road. It was a short distance down the road.

Q. Did you later see a fire?

A. Yes, I did. She carried the gas along with her in the car.

* * * * * * *

[fol. 92] Mr. Reese: No further questions.

Cross examination.

By Mr. Brannen:

Q. Mrs. Lee, did you and Mr. Lee testify at the divorce hearing?

A. Yes, sir.

Q. At that time did you testify substantially the same as you testified today about the clothes and the guns?

A. Yes, sir.

Q. Now, you say that that gun rack was locked?

A. At all times I have ever seen it.

Q. You don't know who had the key, do you?

A. No, I don't.

Q. Did you ever see a picture in the house?

A. Yes, sir.

Q. Were you ever aware that the picture was damaged?

A. Yes, sir.

Q. Are you aware of how that occurred?

A. Yes, sir. It was damaged with a sharp instrument. It was a long letter opener. It was very sharp.

Q. Were you present when the damage occurred?

A. I was in my house, but I could see it from where I entered her house.

Q. You were in your house?

A. Out on the porch.

[fol. 93] Q. From where you were sitting you saw, you said, her. Were you referring to Mrs. Clay?

A. I was.

Q. And you saw her damage the picture?

A. Yes, sir.

Q. With a knife?

A. Yes, sir.

Q. Where was Mr. Clay at that time?

A. He was there.

Q. Was he in the same room?

A. Yes he was in the living room.

Q. Was the picture in the living room?

A. It was.

Q. Mr. and Mrs. Clay and the picture were in the living room when she took a knife and damaged the picture?

A. That's right.

Q. Now, prior to the damage to the picture did you observe any actions on the part of Mr. and Mrs. Clay that would lead you to conclude that they were arguing?

A. Yes, sir, they had been.

Q. They had been?

A. Yes.

Q. And you could hear it from where your house was?

A. That's right.

Q. You say that you lived fairly close together and you [fol. 94] weren't too sure about the distances. Could you use this courtroom as a guide, if you can? If you cannot; well, all right. Say from the back of the courtroom to this wall, as a guide. Can you use that and say it was two distances—your house was two distances from the Clay house, or one distance?

A. It wasn't more than one distance.

Q. And you had no trouble hearing the argument?

A. No, sir.

Q. Now, this picture-slashing incident occurred when?

A. It was either the very last of December or the first of January.

Q. You may have testified to this. When was it that the guns were found?

A. It must have been about the middle of January. It was after the picture had been damaged.

Q. Would you please, ma'am, give me the date that you saw Mrs. Clay drive off with these articles in the car?

A. That was about the same time that the guns were found.

Q. Do you know what Mrs. Clay was hauling off in the car?

A. It was Mr. Clay's clothes.

Q. You recognized them from where you were?

A. I did. Some of them fell out on the road and I knew they were his. They were pieces of clothes I had seen him wear.

Mr. Brannen: I have nothing else.

. . . . . .

[fol. 99]

EXCERPTS FROM CHARGE OF THE COURT

In Florida this policy does cover vandalism or malicious mischief and losses of that type, and in Florida a wife or a husband may be guilty of stealing, so to speak, from the other.

Larceny which is theft has been defined by the statute, a person who, with intent to deprive or defraud the true owner of his property or of the use and benefit thereof or to appropriate the same to the use of the taker or of any [fol. 100] other person, takes from the possession of the true owner or of any other person, or obtains from such person possession by color or aid of fraudulent or false representations or pretense, or of any false token or writing or obtains the signature of any person to a written instrument, the false making thereof would be punishable as forgery, or secretes, withholds or appropriates to his own use or that of any person other than the true owner any money, personal property, goods and chattels, thing in action, evidence of debt, contract, or property, or article of value of any kind would be and is guilty of larceny.

Now, a wife can take from her husband his property and would be guilty of larceny in so taking, and if it was larceny it would be recoverable under this policy, that is the fair cash value at the time of the loss. But before you can find that she would be guilty of taking this property from the husband and would have to find that she was guilty of such a taking. In other words, guilty of larceny in this case, and that pertains to that silverware, you recall, that was talked about in this case which the witnesses talked about, and that, likewise, is a question of fact for your determination.

If, in fact, she took the silverware as a gift or with his agreement or without intent to deprive him of its possession or use, then it wouldn't be larceny.

. . . . . .

[fol. 102] Mr. Brannen: I didn't get the plaintiff's instructions until just a moment ago and I didn't have a chance to object to it.

The Court: I didn't give them only the definition under the statute.

Mr. Brannen: I want to object to that.

The Court: Do you want to object to anything else?

Mr. Brannen: Just those charges concerning the larceny.

The Court: It will be noted.

• • • • • • • •

[fol. 106]

IN UNITED STATES DISTRICT COURT

STATEMENT OF THE POINTS ON WHICH THE APPELLANT INTENDS TO RELY ON APPEAL—Filed October 31, 1958

Comes now the appellant, Sun Insurance Office, Limited, a corporation organized under the laws of Great Britain, authorized to transact business in Florida, and states the points on which the appellant intends to rely on appeal:

1. The verdict is contrary to law.

2. The verdict is contrary to the evidence.

3. The verdict is contrary to the law and the evidence.

4. The Court erred when it failed to direct a verdict for the defendant-appellant at the close of the plaintiff's case.

[fol. 107] 5. The Court erred when it failed to direct a verdict for the defendant-appellant as a matter of law at the close of the plaintiff's case pursuant to defendant-appellant's motion based upon its defense as contained in paragraph number seven in its answer.

6. The Court erred when it failed to direct a verdict for the defendant-appellant as a matter of law at the close of the plaintiff's case pursuant to defendant-appellant's motion based upon its defense as contained in paragraph number eight in its answer.

7. The Court erred by failing to grant defendant-appellant's motion for judgment non obstante veredicto or in the alternative for a new trial.

Wicker & Smith, 506 Ainsley Building, Miami, Florida, By Joe C. Brannen, Attorneys for Appellant.

IN THE UNITED STATES DISTRICT COURT

APPELLANT'S DESIGNATION OF RECORD ON APPEAL—
Filed October 31, 1958

To the Clerk of the United States District Court for the Southern District of Florida, West Palm Beach Division:

Pursuant to Rule 75 (a) of the Federal Rules of Civil Procedure, the appellant designates the following portions of the record to be contained in the record on appeal in the [fol. 108] above entitled cause to the United States Circuit Court of Appeals for the Fifth Circuit;

1. The complaint and the exhibit attached thereto—Exhibit A.

2. Answer of the defendant.

3. The entire transcript, stenographically reported, of the trial of the captioned matter.

4. Verdict.

5. Final Judgment.

6. Defendant's motion for judgment non obstante veredicto or in the alternative for a new trial.

7. Order denying post trial motions and setting supersedeas amount.

8. Notice of appeal, with date of filing.

9. Motion for extension of time to file transcript of record.

10. Order on motion to extend time to file transcript.

11. This designation.

12. Plaintiff's Exhibit Number One.

13. A concise statement of the points on which the appellant intends to rely on appeal is appended to this designation.

14. Appellant further reserves the right to designate further other portions of the record, proceedings, and evi-

dence to be contained in the record on appeal, if such procedure is deemed necessary by reason of the filing by [fol. 109] appellee of any counter-designation or any objection to this designation.

Dated this 31st day of October, 1958.

Wicker & Smith, 506 Ainsley Building, Miami, Florida, Attorneys for Appellant, by Joe C. Brannen.

[fol. 111] CLERK'S CERTIFICATE (omitted in printing).

[fol. 112] MINUTE ENTRY OF ARGUMENT AND SUBMISSION—March 11, 1959 (omitted in printing).

[fol. 113]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17525

SUN INSURANCE OFFICE LIMITED, Appellant,

versus

JOHN CLAY, Appellee.

Appeal from the United States District Court for the Southern District of Florida.

OPINION—April 8, 1959

Before RIVES and TUTTLE, Circuit Judges, and SIMPSON, District Judge.

TUTTLE, Circuit Judge: This is a suit on a personal property floater policy. It was instituted in the United States District Court for the Southern District of Florida by the insured, John Clay. A jury awarded recovery in the total amount of $6,800.00 and judgment was entered accordingly. The insurer appeals, contending the district

[fol. 114] court erred in holding that the stipulation in the policy which forbade suit unless it was instituted within twelve months next after discovery of the loss[1] was rendered void and unenforceable by Florida Revised Statute 95.03 (1957), which reads as follows:

> "Stipulations in contract shortening period of limitation illegal.—All provisions and stipulations contained in any contract whatever entered into after May 26, 1913 fixing the period of time in which suits may be instituted under any such contract, or upon any matter growing out of the provisions of any such contract, at a period of time less than that provided by the statute of limitations of this state, are hereby declared to be contrary to the public policy of this state, and to be illegal and void. No court in this state shall give effect to any provision or stipulation of the character mentioned in this section."

We agree with appellant's contention as to this defense, and therefore we do not reach its other contentions.

The policy was issued and delivered to appellee on April 22, 1952, in Chicago, Illinois. At that time appellee was a citizen of and resided in the state of Illinois. He paid the premium in a lump sum in Chicago when he received the policy. Subsequently, in July, 1952, appellee moved to [fol. 115] Florida. He purchased a ranch near Lake Harbor, Florida, in July or August of 1952 and became a resident of Florida from that time on. In December, 1954 and January, 1955, while he was living at the ranch near Lake Harbor, certain of his insured personal property was destroyed by vandalism and other insured property was stolen. Appellee notified appellant of his losses on Febru-

---

[1] "Suit Clause:—No suit, action or proceeding for the recovery of any claim under this Policy shall be sustainable in any court of law or equity unless the same be commenced within twelve (12) months next after discovery by the Assured of the occurrence which gives rise to the claim. Provided, however, that if by the laws of the state within which this Policy is issued such limitation is invalid, then any such claims shall be void unless such action, suit or proceeding be commenced within the shortest limit of time permitted by the laws of such state to be fixed herein."

ary 1, 1955. After investigating the claim, appellant denied liability on April 6, 1955. Suit was not instituted until May 20, 1957.

Under the terms of the "Suit Clause" this suit was barred because of appellee's failure to institute it within twelve months next after he had discovered the losses. According to the law of Illinois, such a contractual provision was and is valid and enforceable.[2]

The insurance policy was issued and delivered in Illinois to a citizen of that state, and it was paid for by him while he was present and residing in that state. It insured the appellee's personal property which was at that time presumably in the same state. According to the law of Florida, it was therefore an Illinois contract, the validity and interpretation of which would ordinarily be determined by the law of Illinois. *Connor* v. *Elliott*, 79 Fla. 513, 85 So. 164, cert. dismissed, 254 U.S. 665. Since the law of Illinois validates clauses limiting the time within which suit may be brought, this clause presents a good defense to appel- [fol. 116] lee's suit unless the Florida statute renders it unenforceable in any Florida court.

This presents a question which substantially affects the outcome of this suit, and since federal jurisdiction in this case is based on diversity of citizenship, we must apply the law which the state courts of the forum would apply (*Guaranty Trust Co.* v. *York*, 326 U.S. 99; *Klaxon Co.* v. *Stentor Electric Mfg. Co.*, 313 U.S. 487), insofar as the state law does not violate the constitution of the United States. See *Sampson* v. *Channell*, 1 Cir., 110 F. 2d 754, cert. denied, 310 U.S. 650.

The wording of the Florida statute is quite general and broad, and it appears to apply to all contracts, wherever made or performed, which happen to be sued upon in the courts of Florida. However, there are no reported instances where this statute has been applied under circumstances similar to those presented here; and the jurisprudence of Florida gives us reason to believe that the Florida

---

[2] Trichelle v. Sherman & Ellis, Inc., 259 Ill. App. 346; Hartzell v. Maryland Cas. Co., 163 Ill. App. 221; see also Smith-Hurd Ann. St. Ch. 73, §969a(1)(k) (1958); cf. Smith-Hurd Ann. St. Ch. 73, §§837(1)(a), 903(1)(a), (1958).

state courts would construe it as being inapplicable under these circumstances.

The following representative decisions demonstrate the Florida courts' tendency, based on their interpretation of the requirements of due process and their recognition of the general common law rules of comity, to refrain from attempting to apply Florida statutes or their own notions of public policy to foreign contracts which are valid where entered into: *Connor* v. *Elliott, supra; Sovereign Camp, Woodmen of the World* v. *Mixon*, 79 Fla. 420, 84 So. 171; *Equitable Life Assur. Co. of U.S.A.* v. *McRee*, 75 Fla. 257, [fol. 117] 78 So. 22; *American Fire Ins. Co.* v. *King Lumber & Mfg. Co.*, 74 Fla. 130, 77 So. 168, aff'd., 250 U.S. 2.

It is thus quite possible that the Florida state courts would reach the same conclusion that the Kentucky court reached in *Union Cent. Life Ins. Co.* v. *Barnes*, 175 Ky. 364, 194 S.W. 339[3]—that the validity of a contractual provision limiting the time within which suit can be brought is to be determined by the lex locus contractu rather than the lex fori. This result could be expected if the court did not fall into the Alabama Supreme Court's error[4] of assuming that the issue presented concerned the choice of the applicable statute of limitations rather than the choice of the substantive law governing the validity of the contract itself.[5]

We are not obliged, however, to make the difficult guess as to what the Florida state courts might decide if they were presented with this issue, for we conclude that there is only one possible decision which would be consonant with due process of law[6] to deny application of the Florida statute to this contract.

---

[3] See also Brooks v. Travelers' Protective Ass'n of America, E.D. N.Y., 47 F. 2d 618.

[4] Galliher v. State Mutual Life Ins. Co., 150 Ala. 543, 43 So. 833.

[5] See Union Central Life Ins. Co. v. Barnes, 175 Ky. 364, 194 S.W. 339, 340; Hartford Accident & Indemnity Co. v. Delta & Pine Land Co., 292 U.S. 143, 149; cf. Home Insurance Co. v. Dick, 281 U.S. 397, 406, 409, 410.

[6] Cf. Sampson v. Channell, 1 Cir., 110 F. 2d 754, cert. denied, 310 U.S. 650.

Examining the decisions of the Supreme Court of the United States on this subject, we find none which involves [fol. 118] the identical circumstances presented here, but we find several which present very similar facts and which, we feel, clearly and unmistakably point out the result which must be reached in this case.

The case of *Home Insurance Co.* v. *Dick, supra,* involved a contract of marine insurance issued and paid for in Mexico and insuring a vessel which was never inside the state of Texas, the state in which suit on the policy was brought. The original insurance was payable in Mexico. After this insurance was issued, the risk was reinsured (outside of Texas) by a New York insurer which was qualified to do business in Texas. The original assured assigned the policy to a citizen of Texas who was then in Mexico and remained there until after the occurrence of the loss; after which he returned to Texas and brought an *in rem* action in Texas by garnishment proceedings directed against the domestic insurance agents. The defendants pleaded a stipulation in the policy forbidding suit except within one year next following the loss. The Texas courts denied the defendants the benefit of this stipulation. They held it was invalidated by a Texas statute outlawing such agreements. The Supreme Court of the United States reversed the Texas courts by a unanimous vote. In an opinion written by Mr. Justice Brandeis, the Court stated that the statute as construed by the Texas courts deprived the defendants of property without due process of law. This statute, the Court held, increased their obligation and imposed burdens they had not contracted for; and this, the Court held, could not be done even in the name of the public policy of Texas.

[fol. 119] This holding was followed by Judge Strum, of the District Court for the Southern District of Florida, later a member of this Court, in the case of *Holderness* v. *Hamilton Fire Ins. Co. of New York,* S.D.Fla., 54 F. Supp. 145, which involved the Florida statute we are here considering. But, appellee argues, in the Holderness case, the plaintiff was a resident of the state of North Carolina, the policy was issued in North Carolina, and the building which was insured was located in North Carolina ("Holder-

ness was nothing more than a sojourner in the State of Florida."). Thus, he contends, the Holderness decision, like the Dick decision, was dictated by a situation which is not duplicated in this case: the forum's lack of sufficient connection with the disputed contracts to warrant the invocation of the public policy of the forum.

Assuming that a state might, if its connections with a foreign contract are sufficiently great, be permitted to effectuate its own public policy by striking down an agreement which was valid where made, the question remains: are the contacts which Florida has with this contract great enough to permit this to be done in this case? These contacts consist of nothing more than the presence of the insured property and the beneficiary in the state of Florida beginning subsequent to the formation of the contract and continuing up to the time of the suit. Nothing was to be done in Florida pursuant to the insurance contract except the purely ministerial act of payment by the insurer, and that was so only because of the fortuitous circumstance of the assured's removal from Illinois to Florida. Under strikingly similar circumstances, the Supreme Court has held that the forum [fol. 120] state did not have the right to deprive a defendant of a contractual provision limiting the time within which suit could be brought. *Hartford Accident & Indemnity Co.* v. *Delta & Pine Land Co.*, 292 U.S. 143, reh. den., 292 U.S. 607.

In the Delta & Pine Land case, the contract concerned a fidelity bond by which the defendant, a Connecticut corporation, qualified to do business in Mississippi and Tennessee, had insured the plaintiff, a Mississippi corporation with its principal office in Tennessee, against loss resulting from dishonesty of its employees "in any position anywhere." The policy listed twenty-one employees who were then working in Mississippi.[7] The contract, however, was negotiated and executed in Tennessee. It contained a condition that any claim under the contract had to be made within fifteen months from the termination of the suretyship agreement. One of the employees whose acts were insured against committed defalcations in Mississippi and

[7] Watson v. Employers Liability Co., 348 U.S. 66, 77.

the insured sued the indemnitor in that state. A Mississippi statute stated that all contracts of insurance on property, lives or interests in Mississippi were deemed made in that state; another stated that the Mississippi statutory periods of limitations of actions could not be altered by private agreements. The Mississippi court, applying these statutes, struck down the aforementioned contractual condition and allowed recovery on the contract despite the plaintiff's failure to make claim within the fifteen-month period. The Supreme Court reversed in a unanimous decision.

[fol. 121] The following language from the Supreme Court's opinion sets forth precisely the principles we must follow and the decision we must make in the present case:

> "It is urged, however, that in this case the interest insured was in Mississippi when the obligation to indemnify the appellee matured, and it was appellant's duty to make payment there; and these facts justify the state in enlarging the appellant's obligation beyond that stipulated in the bond, to accord with local public policy. The liability was for the payment of money only, and was conditioned upon three events,—loss under the policy, notice to the appellant at its home office, and presentation of claim within fifteen months of the termination of the suretyship. All of these conditions were of substantial importance, all were lawful in Tennessee, and all go to the obligation of the contract. It is true the bond contemplated that the employee whose faithfulness was guaranteed might be in any state. He was in fact in Mississippi at the date of loss, as were both obligor and obligee. The contract being a Tennessee contract and lawful in that state, could Mississippi, without deprivation of due process, enlarge the appellant's obligations by reason of the state's alleged interest in the transaction? We think not. Conceding that ordinarily a state may prohibit performance within its borders even of a contract validly made elsewhere, if the performance would violate its laws (Home Insurance Co. v. Dick, supra, p. 408), it may not on grounds of policy ignore a right

which has lawfully vested elsewhere if, as here, the interest of the forum has but slight connection with the substance of the contract obligations. Here per- [fol. 122] formance at most involved only the casual payment of money in Mississippi. In such a case the question ought to be regarded as a domestic one to be settled by the law of the state where the contract was made. A legislative policy which attempts to draw to the state of the forum control over the obligations of contracts elsewhere validly consummated and to convert them for all purposes into contracts of the forum regardless of the relative importance of the interests of the forum as contrasted with those created at the place of the contract, conflicts with the guaranties of the Fourteenth Amendment. Aetna Life Ins. Co. v. Dunken, supra; Home Insurance Co. v. Dick, supra. Cases may occur in which enforcement of a contract as made outside a state may be so repugnant to its vital interests as to justify enforcement in a different manner. Compare Bond v. Hume, 243 U.S. 15, 22. But clearly this is not such a case." 292 U.S. at 149, 150.

In accordance with the foregoing, we hold that the provision in the subject insurance policy which limits the time in which suit can be brought is a substantial property right which is protected by the Fourteenth Amendment to the Constitution, and under the circumstances of this case a violation of due process would result from the application of Florida Statute 95.03 to this provision.

As the Supreme Court observed in the Delta & Pine Land case, our conclusion that it would violate due process renders unnecessary a consideration of whether it would violate the full faith and credit or the contract clauses of [fol. 123] the federal constitution. Extensive research, however, among the decisions of the Supreme Court and the lower federal and state courts relating to control of interstate relations by the due process and full faith and credit clauses discloses that the Dick and Delta & Pine Land decisions have been cited many times and have never been called into question or limited by later decisions of

the Supreme Court. See, e.g., *Watson* v. *Employers Liability Corp.*, 348 U.S. 66, 71, 76-78; *Lauritzen* v. *Larsen*, 345 U.S. 571, 590, 591; *Order of Travelers* v. *Wolfe*, 331 U.S. 549, 608, 628; *Pink* v. *A.A.A. Highway Express*, 314 U.S. 201, 211; cf. *Hanson* v. *Deckla*, 357 U.S. 235, 254; *Hoopeston Co.* v. *Cullen*, 318 U.S. 313.

The cited cases form part of a larger body of law which has as a basic premise the principle that only where a state has significant interests involved may it impair property rights created in other states. See, e.g., *Pink* v. *A.A.A. Highway Express*, 314 U.S. 201, 209-11. A secondary principle which is also of significance here is that even though the affected interests of the state may be substantial enough to justify its refusal to give affirmative help in enforcing a foreign contract which it finds obnoxious, these interests may, on the other hand, be insufficient to justify the state's rewriting of the contract, enlarging the obligation of the makers and enforcing it in a manner contrary to their undertaking. *Watson* v. *Employers Liability Corp.*, 348 U.S. 66, 76 (concurring opinion); *Hartford Accident & Indemnity Co.* v. *Delta & Pine Land Co.*, 292 U.S. 143, 149, 150; *Home Insurance Co.* v. *Dick*, 281 U.S. 397, 408-10; [fol. 124] see also *Holderness* v. *Hamilton Fire Ins. Co. of New York*, S.D.Fla., 54 F. Supp. 145.

Following the principles set out above, we hold that the district court erred in failing to sustain the appellant's defense to this suit.

The judgment of the district court is Reversed and the case is Remanded for entry of judgment in favor of the appellant.

Rives, Circuit Judge, Dissenting:

The Legislature of the State of Florida has enacted that, "All provisions and stipulations contained in any contract whatever . . . fixing the period of time in which suits may be instituted under any such contract . . ., at a period of time less than that provided by the statute of limitations of this state, are hereby declared to be contrary to the public policy of this state, and to be illegal and void.

No court in this state shall give effect to any provision or stipulation of the character mentioned in this section." Florida Statutes Annotated, §95.03. The language of that statute seems to me to leave no room for construction; it applies to "any contract whatever."

No one has attacked the validity of that statute as applied to contracts made in Florida, or can reasonably do so. Stipulations shortening the period of limitation result in the same evils and abuses whether entered into in the State of Florida or outside that State. I cannot agree that [fol. 125] the Florida Legislature, or the courts of that State, must accord to such a stipulation contained in an ambulatory contract of insurance held by a Florida resident, but entered into in Illinois, any greater sanctity than they would accord to such a stipulation made in Florida. I think that the Florida Legislature can protect residents of that State against the application in Florida courts of stipulations shortening the period of limitation in contracts performed in Florida regardless of the place where the contracts are executed. I therefore respectfully dissent.

[fol. 126]

IN THE UNITED STATES COURT OF APPEALS

No. 17,525

SUN INSURANCE OFFICE LIMITED

versus

JOHN CLAY

JUDGMENT—April 8, 1959

This cause came on to be heard on the transcript of the Record from the United States District Court for the Southern District of Florida, and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby,

reversed; and that this cause be, and it is hereby, remanded to the said District Court for entry of judgment in favor of the appellant;

It is further ordered and adjudged that the appellee, John Clay, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

"Rives, Circuit Judge, dissenting."

* * * * * * *

[fol. 131]

IN UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[Title omitted]

PETITION OF JOHN CLAY FOR REHEARING—
Filed May 12, 1959

To the Honorable Judges of the United States Court of Appeals for the Fifth Circuit:

John Clay, plaintiff-appellee, above named, presents this, his petition for a rehearing in the above entitled cause and in support thereof respectfully shows:

1. The Court in its opinion of reversal herein has clearly failed to recognize that Florida Revised Statute 95.03 (1957) emphatically declares that any attempt to govern the Florida Statute of Limitations by contract is contrary to the public policy of the State and is illegal and void.

[fol. 132] 2. The Court in its opinion of reversal herein assumes that the Supreme Court of Florida would reach the same conclusion that the Kentucky Court reached in *Union Central Life Insurance Company* v. *Barnes*, 175 Ky. 364, 194 S.W. 339, although the State of Kentucky does not have a statute similar to or in any wise resembling Florida Revised Statute 95.03 (1957) and the Court completely disregards the ruling of the Alabama Supreme Court in the case of *Galliher* v. *State Mutual Life Insurance Company*, 150 Ala. 543, 43 So. 833, which said

case is a ruling on a statute similar to and having the same effect as Florida Revised Statute 95.03 (1957).

3. The Court in its opinion of reversal herein has abrogated the validity of a statute of the State of Florida although the validity of said statute was not attacked by the appellant.

4. The case of *Hartford Accident and Indemnity Company* v. *Delta and Pine Land Company*, 292 U.S. 143, reh. den. 292 U.S. 607, which the Court regards as a conclusive ruling of its opinion of reversal herein is clearly distinguishable from the case at bar in that the Delta and Pine Land case dealt with a fidelity bond, covering employees located in various States of the Union, while the case at bar deals with a personal property floater policy (world wide), covering property owned by a citizen of the State of Florida and located within the State of Florida.

5. The Court in its opinion has failed to recognize that the complaint alleges that the appellant-defendant is a corporation authorized to do business in Florida and that [fol. 133] this allegation is admitted by the answer of the appellant defendant; that therefore the appellant was subject to the laws of Florida and the effect that this situation has on due process.

Wherefore, upon the foregoing grounds it is respectfully urged that this petition for rehearing be granted and that the judgment of the District Court be upon further consideration, affirmed.

Paschal C. Reese, by Paschal C. Reese, 209 South Olive Avenue, West Palm Beach, Florida, Attorney for Appellee.

Certificate of Counsel (omitted in printing).

[fol. 134]

IN UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[Title omitted]

PETITION OF STATE OF FLORIDA FOR REHEARING—
Filed May 12, 1959

To the Honorable Judges of the United States Court of Appeals for the Fifth Circuit:

The State of Florida, by its Attorney General, Richard W. Ervin, joins the appellee, John Clay, in petitioning for a rehearing in the above-entitled cause and in support thereof respectfully shows:

(1) The Court, in its opinion of April 8, 1959, assumed that the Supreme Court of Florida would reach the same conclusion that the Court of Appeals of Kentucky reached in *Union Central Life Insurance Company* v. *Barnes*, 175 [fol. 135] Ky. 364, 194 S.W. 339. The clear and unambiguous language of Section 95.03, Florida Statutes, would permit no such conclusion. Said section prohibits the courts of Florida from giving *any* effect to stipulations contained in any contract fixing the period of time in which suits may be instituted under such contract.

(2) The Court in its opinion of April 8, 1959, overlooked: (a) the fact that the State of Florida is not only the location of the forum but is also the state in which the cause of action arose; and (b) the fact that not only is the appellee a resident of the State of Florida but the appellant is admitted to do business in Florida and has thereby subjected itself to regulation of its insurance business by the State of Florida. These facts in addition to those enumerated on page 7 of the Court's opinion justify the imposition of Section 95.03, Florida Statutes, upon the contract in question.

(3) The Court in its opinion of April 8, 1959, overlooked: (a) the fact that a contract of insurance is not an ordinary bilateral contract but is a "form" type contract

[cf. *The Kensington*, 183 U.S. 263]; and (b) the fact that the "agreement" to fix a period of limitations in the contract in question, since it relates to the administration of justice, is not entitled to the same protection accorded to ordinary contract provisions [cf. *Carbon Black Export* v. *SS Monrosa*, (5th Cir.) 254 F.2d 297, cert. dismissed —— U.S. ——, 3 L. Ed. 2d 723].

(4) The case of *Hartford Accident and Indemnity Company* v. *Delta and Pine Land Company*, 292 U.S. 143, which the Court in its opinion of April 8, 1959, relied most [fol. 136] heavily upon, is clearly distinguishable from the case at bar in that the stipulation in question in said case was as follows:

> "Any claim hereunder must be duly made upon the surety within fifteen (15) months after the termination of the suretyship for the defaulting employee, and no suit, action, or proceeding shall be brought hereunder by the employer against the surety after the expiration of twelve (12) months after the filing of proof of loss as above required, or, in case such limitation be void under the law of the place governing construction hereof then within the shortest period of limitation permitted by such law." 150 So. 206.

The stipulation requiring presentation of a claim within fifteen months, *not* the stipulation requiring the institution of a suit within twelve months, was at issue in the *Delta and Pine Land Case*.

Wherefore, upon the foregoing grounds it is respectfully urged that this petition for rehearing be granted and that the judgment of the District Court be, upon further consideration, affirmed.

Richard W. Ervin, Attorney General, Allan F. Milledge, Assistant Attorney General, Capitol Building, Tallahassee, Florida, Amicus Curiae.

[fol. 137] Certificate of Counsel (omitted in printing).

[fol. 149]

IN THE UNITED STATES COURT OF APPEALS

[Title omitted]

MINUTE ENTRY OF ORDER DENYING PETITIONS FOR REHEARING—May 28, 1959

It is ordered by the Court that the petitions for rehearing filed in the above styled numbered cause be, and the same are hereby Denied.

"Rives, Circuit Judge, dissenting."

[fol. 150] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 151]

IN SUPREME COURT OF THE UNITED STATES

No. 349, October Term, 1959

JOHN CLAY, Petitioner,

vs.

SUN INSURANCE OFFICE LIMITED

ORDER ALLOWING CERTIORARI—October 26, 1959

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.